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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 449

NEWARK FIRE INSURANCE COMPANY,
APPELLANT,

vs.

STATE BOARD OF TAX APPEALS AND THE CITY OF NEWARK

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED OCTOBER 31, 1938.

SUPREME COURT OF THE UNITED STATES

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 5, 1939.

—9367

[fol. 1] **IN SUPREME COURT OF NEW JERSEY**

WRIT OF CERTIORARI

State of New Jersey to State Board of Tax Appeals and City of Newark, a Municipal Corporation of the State of New Jersey, Greeting:

We, being willing for certain reasons, to be certified of a judgment of the State Board of Tax Appeals filed July 7, 1936, affirming the action of the Essex County Board of Taxation in denying the claim of Newark Fire Insurance Company for exemption from taxation on certain personal property owned by it for the year 1935 and sustaining assessment for taxation on said property for said year, do command you that the said judgment together with the petition of appeal, the record taken before said State Board of Tax Appeals and the opinion of said State Board of Tax Appeals with all things touching and concerning the same as fully and entirely as before you they remain, to our Justices of the Supreme Court at Trenton, on the 19th day of January, next, you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, Thomas J. Brogan, Esq., Chief Justice of our Supreme Court, at Trenton, this 10th day of October, 1936.

Fred L. Bloodgood, Clerk.

Arthur T. Vanderbilt, Attorney.

This writ is allowed. Let it be sealed.

Dated October 10, 1936.

Charles W. Parker, Justice of the Supreme Court.

[fol. 2] IN SUPREME COURT OF NEW JERSEY

NEWARK FIRE INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS and CITY OF NEWARK, a Municipal Corporation of the State of New Jersey, Defendants

On Certiorari

ACKNOWLEDGMENT OF SERVICE—Filed October 16, 1936

Service of writ of certiorari returnable January 19, 1937 is hereby acknowledged this 14th day of October, 1936.

Charles E. Cook, Secretary, State Board of Tax Appeals. Frank A. Boettner, Attorney of Defendant, City of Newark.

[fol. 3] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

RETURN TO WRIT—Filed November 19, 1936

The State Board of Tax Appeals doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment and proceedings in the matter of the appeal of Newark Fire Insurance Company, from the assessment of property located in the City of Newark, for the year 1935, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

State Board of Tax Appeals, by Charles E. Cook, Secretary. (Seal.)

[fol. 4] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of the Application of NEWARK FIRE INSURANCE COMPANY for the Reduction of the Tax Assessment for the Year 1935 on Personal Property

PETITION—Filed December 14, 1935

To the State Board of Tax Appeals:

Your petitioner, Newark Fire Insurance Company, Statutory Agent's Office—41 Clinton Street, Newark, N. J. Principal Office—150 William Street, New York City, respectfully shows that Newark Fire Insurance Company is a fire insurance company duly organized under the laws of the State of New Jersey, having its principal office and business situs at 150 William Street, in the City of New York, County of New York and State of New York, and is the owner of certain personal property consisting of stocks, bonds, other securities and accounts receivable.

That said property has been assessed for the purpose of taxation for the year 1935 at a valuation of ** Land, $—;

---

* Where city property is the subject of appeal, care should be taken to describe the lot, block and street number so that the same may correspond with the collector's books.

** This amount should be the original valuation of the property, as it appears on the tax bill.

nprovement, $—; Personal, $1,069,000; Total $1,069,000, which assessment your petitioner is aggrieved, because e said assessment is in excess of its true value and beuse petitioner has no legally taxable capital stock paid and accumulated surplus after deducting liabilities d exemptions allowed by law, and because petitioner is t taxable in the City of Newark because its principal fice and business situs is in the City of New York, State New York, and not in the taxing district of the City of ewark.

ol. 5] That an appeal from said assessment has been ed with the Essex County Board of Taxation, which apal said board disposed of as follows:

Affirmed.

Your petitioner, therefore, prays that said assessment *** Land, $—; Impt., $—; Pers., $1,069,000; Total, ,069,000, for the year 1935, be cancelled.

Dated December —, 1935.

(Signed) Newark Fire Insurance Company, by Harold Warner, President.

Duly sworn to by Harold Warner. Jurat omitted in printg.

ol. 6] STATE OF NEW JERSEY,
County of Essex, ss:

William Blackman being duly sworn according to law, his oath says that he served a copy of the above petition d affidavit on Frank A. Boettner (Attorney or Clerk) of ty of Newark (name of taxing district), personally, this th day of December, 1935.

William Blackman.

Sworn and subscribed before me this 12th day of December, 1935. Evelyn T. Adam, a Notary Public of New Jersey. (Seal.)

*** This amount should be the valuation to which the assment was changed by the County Board of Taxation, appeal.

STATE OF NEW JERSEY,
County of Essex, ss:

William Blackman being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on William S. Macksey (President or Secretary) of the Essex County Board of Taxation, personally, this 12th day of December, 1935.

William Blackman.

Sworn and subscribed before me this 12th day of December, 1935. Evelyn T. Adam, a Notary Public of New Jersey. (Seal.)

[fol. 7] BEFORE STATE BOARD OF TAX APPEALS

[Title omitted]

In the matter of the application for cancellation, and in the alternative, for reduction of a personal property tax upon capital stock and accumulated surplus of Newark Fire Insurance Company, a New Jersey corporation claiming to have a business situs in New York.

Appearances:

For Appellant, Arthur T. Vanderbilt, Esq.
For Respondent, Frank A. Boettner, Esq., by John A. Matthews, Esq.

OPINION—Filed July 7, 1936

WEAVER, President:

The appellant, Newark Fire Insurance Company, is a corporation organized under the laws of the State of New Jersey, having its registered office at Newark, New Jersey. Its main business and executive office is located in New York City. All books of the company, except those required by law to be kept in this State, are retained in its New [fol. 8] York office, where its general accounts are kept. With the exception of a small deposit in New Jersey, all of its cash and securities are in banks located in New York City. For the past six years, the general affairs of the company have been conducted from the New York office,

the only business carried on from its registered office in Newark being a local or regional claim and underwriting department.

The Board of Assessors of the City of Newark levied upon the company's capital and accumulated surplus a personal property assessment in the sum of $1,069,000, which assessment was affirmed by the Essex County Board of Taxation on appeal. Appellant seeks to have this assessment cancelled (or in the alternative reduced), upon the following grounds:

1. The business situs of the company is in the City of New York.

2. (a) That reserves for unearned premiums, (b) reserves for taxes, and (c) agency balances over 90 days old, should not be included in its capital and accumulated surplus, thereby reducing the capital and accumulated surplus by the amounts represented by said items, and that after the deduction of property claimed to be exempt no taxable capital or accumulated surplus remains.

3. That cash on hand or on deposit is exempt and should be deducted from its taxable capital and accumulated surplus.

The company is taxable under Section 307 of the General Tax Act, P. L. 1918, p. 858, which provides:

[fol. 9] "Every fire insurance company and every stock insurance company other than life insurance shall be assessed in the taxing district where its office is situate, upon the full amount of its capital stock paid in and accumulated surplus; the real estate belonging to every such corporation, however, shall be taxed in the taxing district where such real estate is situated, and the amount of assessment upon said real estate shall be deducted from the amount of any assessment made upon the capital stock and accumulated surplus, as herein provided for; no franchise tax shall be imposed upon any such fire insurance company or other stock insurance company included in this section."

Appellant's claim that it is not taxable in this State because its personal property and business situs are located in New York is without merit.

The company is incorporated under the Insurance Companies Act of this State (2 C. S. p. 2839), Section 3 of which provides that its certificate of incorporation shall contain—

"The place where the principal office of said company is to be located and its general business conducted, which shall be within this State; * * *."

This provision has been carried into the amendment of 1929, Chapter 6, page 18. The appellant accordingly is required to maintain its principal office and carry on its general business within the State of New Jersey.

Section 305 of the General Tax Act, P. L. 1918, page 856, provides that:

[fol. 10] "Corporations of this State shall be regarded as residents and inhabitants of the taxing district where their chief office is located, and their personal property shall be taxed the same as that of an individual except as in this act otherwise provided; * * *."

In Union Refrigerator Transit Company v. Kentucky, 199 U. S. 194, the United States Supreme Court said:

"* * * there is an obvious distinction between the tangible and intangible property, in the fact that the latter is held secretly; that there is no method by which its existence or ownership can be ascertained in the State of its situs, except perhaps in the case of mortgages or shares of stock. So if the owner be discovered, there is no way by which he can be reached by process in a State other than that of his domicile, or the collection of the tax otherwise enforced. In this class of cases the tendency of modern authorities is to apply the maxim mobilia sequuntur personam, and to hold that the property may be taxed at the domicile of the owner as the real situs of the debt, and also, more particularly in the case of mortgages, in the State where the property is retained. Such has been the repeated rulings of this court. Tappan v. Merchants' National Bank, 19 Wall. 490; Kirtland v. Hotchkiss, 100 U. S. 491; Bonaparte v. Tax Court, 104 U. S. 592; Sturges v. Carter, 114 U. S. 511; Kidd v. Alabama, 188 U. S. 730; Blackstone v. Miller, 188 U. S. 189.

"If it occasionally results in double taxation, it much oftener happens that this class of property escapes alto- [fol. 11] gether. In the case of intangible property, the

w does not look for absolute equality, but to the much ore practical consideration of collecting the tax upon such roperty, either in the State of the domicile or the situs."

In the case of Cream of Wheat Company v. County of rand Forks, 253 U. S. p. 325, the United States Supreme ourt held that the limitation of the Fourteenth Amendment pon the power of a State to tax the property of its resi- nts which has acquired a permanent situs outside of the tate does not apply to intangible property, even though has acquired a business situs and is taxable in another tate. In that case the Court said:

"The company was confessedly domiciled in North akota; for it was incorporated under the laws of that tate. As said by Mr. Chief Justice Taney, 'It must dwell the place of its creation, and cannot migrate to another overeignty.' Bank of Augusta v. Earle, 13 Pet. 519, 588. he fact that its property and business were entirely in nother State did not make it any the less subject to taxa- on in the State of its domicile. The limitation imposed the Fourteenth Amendment is merely that a State may t tax a resident for property which has acquired a perma- nt situs beyond its boundaries. * * * The limitation pon the power of taxation does not apply even to tangible ersonal property without the State of the corporation's omicile if, like a seagoing vessel, the property has no per- anent situs anywhere. Southern Pacific Co. v. Kentucky, ol. 12] 222 U. S. 63, 68. Nor has it any application to tangible property, Union Refrigerator Transit Co. v. Ken- cky supra, p. 205; Hawley v. Malden, 232 U. S. 1, 11, even ough the property is also taxable in another State by rtue of having a 'business situs' there. Fidelity & Colum- a Trust Co. v. Louisville, 245 U. S. 54, 59."

In Maguire v. Trefry, Tax Commissioner of Common- ealth of Massachusetts, 253 U. S. 12, 16, the United States upreme Court said:

"In Fidelity & Columbia Trust Company v. Louisville, 5 U. S. 54, we held that a bank deposit of a resident of entucky in the bank of another State, where it was taxed, ight be taxed as a credit belonging to the resident of Ken- cky. In that case Union Refrigerator Transit Co. v. entucky, supra, was distinguished, and the principle was

affirmed that the State of the owner's domicile might tax the credits of a resident although evidenced by debts due from residents of another State. This is the general rule recognized in the maxim 'mobilia sequuntur personam,' and justifying, except under exceptional circumstances, the taxation of credits and beneficial interest in property at the domicile of the owner."

In the case of Citizens National Bank of Cincinnati v. Burr, 257 U. S. 99, the United States Supreme Court held that a membership in the New York Stock Exchange held by a resident of Ohio was a property right, intangible in its nature, and that whether it was subject to taxation by Ohio taxing laws was a question of State law, determinable by [fol. 13] the State Court. In that case the Court said:

"Exemption from double taxation by one and the same State is not guaranteed by the Fourteenth Amendment (St. Louis Southwestern Ry. Co. v. Arkansas, 235 U. S. 350, 367-368); much less is taxation by two States upon identical or closely related property interests falling within the jurisdiction of both, forbidden. Kidd v. Alabama, 188 U. S. 730, 732; Hawley v. Malden, 232 U. S. 1, 13; Fidelity & Columbia Trust Co. v. Louisville, 245 U. S. 54, 58."

It is apparent that intangible personal property which has acquired a business situs in a State other than that of the owner, may be taxed both in the State where it has acquired a business situs and in the State of residence of the owner. The proofs established that the company pays no personal property tax in the State of New York, and is now seeking to escape taxation in the State of New Jersey.

The Board concludes that appellant is subject to taxation upon its capital stock and accumulated surplus in the State of New Jersey.

The company's reserve for unearned premiums cannot be deducted as a liability from its capital and accumulated surplus. In Inhabitants of the City of Trenton v. Standard Fire Insurance Co. of New Jersey, 77 N. J. L. 757; 73 A. 606, the Court of Errors and Appeals held that the reserve for unearned premiums is not exempt from taxation and cannot be deducted from the gross assets to ascertain the capital and accumulated surplus. The Court said:

[fol. 14] "This description is more applicable to an asset of the company set apart on its books to an amount equal to the cancellation value of its policies than it is to define a liability or debt. The fund is in the possession and control of the company, is invested by it in interest-bearing securities, and the profits yielded are substantial, and inure to the corporation. It seems not to be held on any trust, nor is it chargeable with any liability, other than that with which the capital and surplus are charged. It is a part of the surplus reserved from dividends. It may never be called upon to provide for the reinsurance of the company's risks or pay losses. * * *

"The question arises, then, should the reserve fund be counted as a liability? In the case of People's Fire Ins. Co. v. Parker, Receiver, 34 N. J. Law, 479, affirmed 35 N. J. Law, 575, it was held by this court that the term 'accumulated surplus', in its application to stock companies, is well understood to refer to the fund they have in excess of their capital and liabilities, and that the word 'liabilities' there used means fixed liabilities, not contingent, citing State v. Utter, 34 N. J. Law, 493. An assessment, levied against the unearned premiums as a part of the accumulated surplus of the company, was in that case affirmed. The liabilities and losses upon policies issued and unexpired is not a fixed and definite liability, but merely contingent, and as such it should not be deducted from the gross assets in order to ascertain the capital stock and accumulated surplus."

The appellant claims that the sum of $71,765.65, set aside as a reserve for Federal taxes, is deductible from the assets [fol. 15] in determining the amount of capital stock and accumulated surplus. The City claims that this is not a debt and should not be deducted. In ascertaining the amount of the capital stock and accumulated surplus, it is necessary to deduct from the assets, not only debts but also liabilities. While a tax is not a debt, it is a fixed liability and should therefore be deducted.

Appellant's claim for deduction of $119,109.72, representing agency balances over ninety days old, cannot be allowed, as this item represents neither debts nor liabilities. It is carried on the books of the company as an asset

Appellant claims that the portion of its capital and accumulated surplus, representing cash on hand or on deposit, in the sum of $532,784.54, is exempt from assessment, by virtue of Chapter 165, Laws of 1933.

If cash on hand or on deposit owned by an individual taxpayer is exempt from taxation, appellant is entitled to deduct it from its capital stock paid in and accumulated surplus, as corporations which are taxable upon the amount of capital stock paid in and accumulated surplus are entitled to deduct therefrom the securities (or property) which are exempt in the hands of individuals. Newark City Bank v. Assessor of the 4th Ward of the City of Newark, 30 N. J. L. 13. It therefore becomes necessary to determine whether the statute exempts the cash and deposits in bank of an individual taxpayer.

Chapter 165 of the Laws of 1933, which is an amendment to Section 203 of the General Tax Act of 1918, provides for the exemption of—

"Cash on hand or on deposit and loans on collateral of savings banks, mutual savings banks and institutions for savings organized under the laws of this State."

[fol. 16] The statute is ambiguous and is susceptible to two constructions,—one that cash on hand or on deposit owned by anyone is exempt, and that loans on collateral of savings banks, mutual savings banks and institutions for savings are exempt. The other construction is that cash on hand or on deposit in the various institutions mentioned in the Act, or cash of the institutions on deposit and loans on their collateral are exempt, in which case the exemption is limited to the institutions mentioned in the Act. If the latter construction be accepted,—that only cash on hand of the various institutions mentioned in the Act, and their deposits, are exempt, then the Act would be unconstitutional. Tippett v. McGrath, Col., 70 N. J. L. 110; 56 A. 134; affirmed 71 N. J. L. 338; 59 A. 1118; Essex County Park Commission v. Town of West Orange, 77 N. J. L. 575; 73 A. 511.

Where an Act is susceptible to two constructions,—one making the Act constitutional and the other making it unconstitutional,—the courts have held that the construction which makes the Act constitutional must be accepted, for the reason that it must be inferred that the Legislature

intended to pass a constitutional act. State (Fidelity Trust Co.) v. Vogt, 66 N. J. L. 86; 48 A. 580; Commercial Trust Co. of N. J. v. Hudson County Board of Taxation, 86 N. J. L. 424; 92 A. 263. Following this construction, it is necessary to hold that cash on hand or on deposit is exempt, without regard to ownership.

After allowing the items for which the company is entitled to either deduction or exemption, a taxable capital and accumulated surplus remains, in excess of the assessment as made.

For the reasons stated, the appeal is dismissed.

[fol. 17] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of Appeal of NEWARK FIRE INSURANCE Co. from the Assessment of Property in City of Newark, County of Essex for the Year 1935

JUDGMENT—Filed July 7, 1936

An appeal in writing having been filed with the State Board of Tax Appeals, duly verified according to the rules of practice prescribed by said Board, by Newark Fire Insurance Co. in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1935, located at City of Newark in the County of Essex consisting of personal property consisting of stocks, bonds, other securities and accounts receivable, and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Arthur T. Vanderbilt, Attorney for the complainant, and John A. Matthews, Attorney for the City of Newark and after considering the same, it is on this seventh day of July nineteen hundred and thirty-six, at a session of the State Board of Tax Appeals, ordered, adjudged and decreed, [fol. 18] under and by virtue of the authority conferred by law, that the assessment of $1,069,000 on personalty, levied for the year 1935 on the above described property, be affirmed and the appeal therefrom dismissed.

BEFORE STATE BOARD OF TAX APPEALS

44532

NEWARK FIRE INS. CO., Petitioner,

vs.

CITY OF NEWARK, CO. OF ESSEX, Respondent

DOCKET ENTRIES

Assessment of 1935

Property: Personalty

Amount, $1,069,000.	Judgment, $—
L.	L.
B.	B.
P. 1 069,000	P.

1935.

Dec. 14. Petition filed.

1936.

March 31. Hearing fixed for April 28th at Trenton and notice sent.

April 28. Case heard. Briefs to be filed.

July 7. Memorandum filed.

" " Judgment entered, dismissing appeal.

[fol. 19] BEFORE STATE BOARD OF TAX APPEALS

MINUTES

State House, Trenton, New Jersey

Tuesday, March 31, 1936.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Compton, Margerum, Parkinson and Smith.

* * * * * * *

The Board fixed the following dates for hearing appeals:

* * * * * * *

Tuesday, April 28th: State House, Trenton, 5 Essex Co. cases. (Newark.)

* * * * * * *

State House, Trenton, New Jersey

Tuesday, April 28, 1936.

The Board met at 10:30 A. M., Advanced Time, on the above date.

Present, President Weaver, Commissioners Compton, Margerum, Parkinson and Smith.

* * * * * * *

The following calendar of appeals was called:

* * * * * * *

4. Newark Fire Insurance Company vs. City of Newark. Case heard, Mr. Arthur T. Vanderbilt appearing on behalf of the petitioner and Mr. John A. Matthews, Special Counsel, appearing on behalf of the City of Newark. The Board heard the testimony of Robert C. Radcliffe on behalf of the petitioner, and reserved decision pending the filing of briefs.

* * * * * * *

[fol. 20] State House, Trenton, New Jersey

Tuesday, July 7, 1936.

The Board met at 10:30 A. M. on the above date for the purpose of organization, as prescribed by Rule 1 of its Rules of Practice.

* * * * * * *

Present, President Weaver, Commissioners Compton, Margerum, Parkinson, Smith, Berg and Moore.

* * * * * * *

President Weaver, Commissioners Margerum, Compton, Parkinson and Smith took up for consideration the appeal of Newark Fire Insurance Co. vs. City of Newark, heard on April Twenty-eighth at Trenton, and after considering the evidence produced ordered that the assessment of $1,069,000, levied for the year 1935 on personal property of the petitioner, be affirmed and the appeal therefrom dismissed.

A memorandum was filed in this case, setting forth the grounds for the conclusions reached.

* * * * * * *

[fol. 21] BEFORE STATE BOARD OF TAX APPEALS

CERTIFICATE OF SECRETARY

I, Chas. E. Cook, Secretary of the State Board of Tax Appeals, do hereby certify, that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of Newark Fire Insurance Company, from the assessment of property in the City of Newark, County of Essex, for the year 1935, as the same are taken from and compared with the originals filed in the office of the State Board of Tax Appeals, on the fourteenth day of December and other dates, A. D. 1935 and 1936, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this nineteenth day of November A. D. 1937.

Chas. E. Cook, Secretary. (Seal.)

[fol. 22] BEFORE STATE BOARD OF TAX APPEALS

[Title omitted]

STIPULATION AS TO FACTS

It is hereby stipulated and agreed by and between Arthur T. Vanderbilt, attorney of appellant Newark Fire Insurance Company, and John A. Matthews, attorney of respondent City of Newark, that the following agreed facts be incorporated in the record:

(a) The following figures have been agreed upon. In the first column appears the designation of what the fund represents; opposite each designation appearing the amount of the fund in question:

1. Capital stock	$2,000,000.00
2. Surplus (as set forth in the books of the company)	2,982,940.29
3. Reserve for unearned premiums	3,001,623.46
4. Reserve for taxes	71,765.65
5. Reserve for contingencies	68,915.35
6. Reserve for reinsurance	4,228.36
7. Agency balances over 90 days old	119,109.72
8. Furniture and fixtures (in Newark office)	1,500.00
Total	$8,250,082.83

[fol. 23] (b) It is further stipulated that the appellant is entitled to the following deductions:

1. Assessed value of real estate	$175,600.00
2. Mortgage loans on real estate	136,188.17
3. Stocks of corporations (exempted by the Tax Act)	1,285,780.00
4. United States Government securities (exempted by the Tax Act)	3,103,173.00
5. Miscellaneous bonds secured by mortgages (exempted by the Tax Act)	37,080.00
Total	$4,737,821.17

(c) It is further stipulated that appellant had cash on hand or on deposit as of October 1, 1934 in the sum of $532,784.54, of which amount the sum of $6,425.32 was on October 1, 1934 deposited in banks located in the State of New Jersey. The balance of $526,359.22 represents either cash on hand at the company's main office at 150 William Street, New York City, or on deposit in banks in the City of New York or banks elsewhere outside of the State of New Jersey.

(d) It is further stipulated and agreed that appellant, Newark Fire Insurance Company, is a corporation organized under the laws of the State of New Jersey. Its registered office is located at 41 Clinton Street, Newark, New Jersey. For the last six years, appellant's main office has been located at 150 William Street, New York City. All of the books of the company are located in its office in New York [fol. 24] City, with the exception of those books required by law to be kept within the State of New Jersey. Its executive officers and its executive office are located at 150 William Street, New York City. The general accounts of the company are kept in the office in New York City. The general accounting, underwriting and executive offices of the company are all located at the main office at 150 William Street, New York City. All cash and securities of the company are located there or in banks in that City or in other banks outside of the State of New Jersey, with the exception of the sum of $6,425.32 on deposit in New Jersey banks. All of the general affairs of the company are conducted at the main office in New York City and have been so conducted there since appellant moved its main office from Newark six years ago.

The appellant maintains an office in the City of Newark at 41 Clinton Street. The only business that is carried on in the Newark office is a local or regional claim and underwriting department for the Counties of Essex, Union, Bergen and Hudson. All reports of business written and claims adjusted here, however, are sent to the main office of the company at 150 William Street, New York City. There is no executive officer at the Newark office.

All of the general affairs of the company are conducted by the executive officers who are all located at the main office at 150 William Street, New York City.

Arthur T. Vanderbilt, Attorney of Appellant, Newark Fire Insurance Company. John A. Matthews, Attorney of Respondent, City of Newark.

[fol. 25] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

REASONS FOR SETTING ASIDE JUDGMENT—Filed November 24, 1936

Prosecutor assigns the following reasons for setting aside the judgment of the State Board of Tax Appeals brought up by this writ of certiorari:

1. The State Board of Tax Appeals erred in holding that prosecutor is subject to taxation in the City of Newark.

2. The State Board of Tax Appeals erred in holding that prosecutor is subject to taxation in the State of New Jersey.

3. The State Board of Tax Appeals erred in holding that prosecutor's reserve for unearned premiums constitutes part of prosecutor's capital and accumulated surplus.

4. The State Board of Tax Appeals erred in holding that prosecutor's reserve for unearned premiums cannot be deducted as a liability from prosecutor's capital and accumulated surplus.

[fol. 26] 5. The prosecutor is not taxable in the State of New Jersey because the business situs of prosecutor is in the State of New York and not within the State of New Jersey.

6. The prosecutor's reserve for unearned premiums is a liability and should therefore not be included in computing its capital and accumulated surplus.

7. The judgment of the State Board of Tax Appeals is in divers other respects illegal, unjust, oppressive and contrary to law.

Arthur T. Vanderbilt, Attorney of Prosecutor.

Service of a copy of the within Reasons is hereby acknowledged this 24th day of November, 1936.

Frank A. Boettner, Attorney of Defendant, City of Newark.

Service of a copy of the within Reasons is hereby acknowledged this 24th day of November, 1936.

Charles E. Cook, Secretary, State Board of Tax Appeals.

[fol. 27] BEFORE STATE BOARD OF TAX APPEALS

[Title omitted]

Statement of Evidence

Transcript of testimony taken in the above entitled matter before the State Board of Tax Appeals at the State House, Trenton, New Jersey on Tuesday, April 28th, 1936.

APPEARANCES

Arthur T. Vanderbilt, Esq., for the Petitioner.

Frank A. Boettner, Esq., by John A. Matthews, Esq., for the Respondent.

Mr. Vanderbilt: If the Commissioner please, Mr. Matthews and I have stipulated most of the facts and I only desire to call Mr. Ratcliffe on one point, the question of the unearned premium reserve. With your permission I will mark the stipulation as an Exhibit.

President Weaver: Is there any objection? Oh, this is a stipulation?

Mr. Vanderbilt: It has been signed, your Honor.

President Weaver: It may be marked.

Stipulation marked Exhibit p-1.

[fol. 28] ROBERT C. RATCLIFFE, sworn for the petitioner.

Direct examination.

By Mr. Vanderbilt:

Q. Mr. Ratcliffe, what is your position with the Newark Fire Insurance Company?

A. Treasurer.

Q. Will you explain to the Commissioners what is meant by the reserve for unearned premiums set up in the statement at $3,001,623.46?

A. Under the terms of all policy contracts issued by the company, the assured has a right to cancel that policy. The premiums, of course, are payable in advance for a term of say, one, three or five years or an indeterminate term. The position of the State authorities, this being a Statutory requirement in all States is that the company must maintain a liability for the so-called unearned premium reserve, which would permit the company to cancel all its business on a pro rata basis under the terms of its policies. For the purpose of convenience, the State Department allows this reserve to be equated so that the computation can be made easier and a little bit more uniform. The theory being that all premiums written; for instance, one year premiums written in the year 1935, some might be written January 1, some might be written December 31, and the average term of those policies issued during the year is equated at July 1, on the theory they would average that date. The requirement of the State Department says then when we file our statements as of December 31, for instance on the one year business written in the year 1935, only six months of that has been earned. In other words, the six months from July 1, to December 31, and so the requirement of the State is that we shall maintain a reserve of 50% of those one year [fol. 29] writings. Similarly on three year business, at the end of December 31, for the first year we would only have earned six months out of the three years or one-sixth and the State Department insists that we shall maintain a reserve, a liability for five-sixths of that policy; five-sixths of that premium; five-sixths of the premium on all three year policies. The Company has no option on this reserve. It is a mandatory requirement. The companies are subject to departmental examination. In the case of the New

Jersey the department examines us every two years and when the department examiners come in, I should say that the majority of the time, or a large portion of the time they consume on the audit is actually consumed on verification of that unearned premium reserve. The liability is a very definite one, mandatory.

Q. Each assured has the right to obtain back the premium reserve on his particular policy or policies?

A. Yes, sir. He can surrender the policy and cancellation and demand return of the premium.

Q. As very often happens the company may desire to relieve itself of liability in a given State or territory and in that event, that premium reserve is used for the purpose of affecting re-insuring of the outstanding liabilities?

A. Yes.

Q. What use is made of the premium reserve for the protection of policy holders in the case of liquidation?

A. In the case of liquidation, the reserve there would be used for re-insuring.

President Weaver: Would that also be used for short rating of policies?

The Witness: The fund would be sufficient to take care of the short rate.

[fol. 30] Q. That is the purpose of the unearned premium reserve, is to short rate the policy insofar as individual policy holders are concerned?

A. It virtually puts upon cancellation the pro rata basis.

Q. The purpose of the unearned premium reserve required by the Statute of every State, so far as the individual policy holder is concerned is to provide a fund from which he may obtain back his unearned premium on his policy in the event he desires to cancel it or in the event the company desires to cancel the policy on its part?

A. Yes, sir.

Q. And from the standpoint of the department of Banking and Insurance, it is a fund to be used for the re-insuring of the business, the outstanding business of the company, if the commissioner determines that the company is in an unsafe condition?

A. Yes, sir.

Q. In either event, it is a fixed liability for the benefit of policy holders as against the company?

A. Yes, sir.

Q. And has your unearned premium reserve been verified by the department of banking and insurance as of any date prior to October 1, 1934?

A. The last departmental examination, examined our statement as of December 31, 1932.

Q. That is ten months prior to that. They are now being audited as of December 31, 1935. They just came in this morning.

Mr. Vanderbilt: We have no objection to offering the one exhibit from the commissioner's office, and to submit to the Board the other one as soon as it is ready.

Q. How long will it take to get the new one ready?

A. We presume, they will be there six or eight weeks, [fol. 31] and then their report will take one month.

President Weaver: If that proof is too long, we will take the previous one for the purpose of comparison and whatever action the commissioner may have taken with respect to certain items.

Q. And in setting up your unearned premium reserve, do you conform to the requirements and ruling of the Department of Banking and Insurance of the State of New Jersey?

A. Yes, sir.

President Weaver: There is no doubt this is a New Jersey corporation, organized under the insurance act?

Mr. Vanderbilt: That is conceded, Commissioner. It has its registered office at 41 Clinton Street, Newark, which is one of the Royal group and has its executive offices and as the stipulation says, the only business done in the Newark office is the local business of three or four counties locally situated.

Cross-examination.

By Mr. Matthews:

Q. The only tax you pay in New York is the franchise tax based upon premiums?

A. Yes.

Q. You don't pay any personal tax in New York?

A. No.

Mr. Matthews: That is all.

President Weaver: Mr. Vanderbilt, is there any question here raised as to where the securities may be located?

Mr. Vanderbilt: That is covered in the stipulation. There is $1,500 worth of office furniture and fixtures in the Newark [fol. 32] office, and accounts in New Jersey banks of $6,425.32 and securities are kept in New York.

President Weaver: Just so you have covered it.

Mr. Vanderbilt: May we follow the same course.

President Weaver: Same course.

Mr. Vanderbilt: I have my brief ready and I will serve it on counsel for the Respondent.

President Weaver: He may reply in ten days.

Mr. Matthews: That is ganging up on the Respondent's briefs, lady and gentlemen of the Board, but I will do my best.

The hearing then adjourned.

[fol. 33] STENOGRAPHER'S CERTIFICATE.

I, John F. Trainor, the stenographer designated by the State Board of Tax Appeals to report stenographically the evidence given before said Board upon the hearing of the appeal of Newark Fire Insurance Company, from the assessment of taxes made by the City of Newark, for the year 1935, do hereby certify that the foregoing is a true and correct transcript of the evidence given before said Board at the hearing on Tuesday, April twenty-eighth, 1936.

In witness whereof I have hereunto set my hand and seal this sixth day of October, 1936.

John F. Trainor. (Seal.)

SECRETARY'S CERTIFICATE

I, Chas. E. Cook, Secretary of the State Board of Tax Appeals, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true and correct transcript of the evidence given before said Board upon the hearing of the appeal of Newark Fire Insurance Company, from the assessment of taxes made by the City of Newark, for the year 1935, said evidence having been sub-

mitted at the hearing on Tuesday, April twenty-eighth, 1936.

In witness whereof I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this sixth day of October, 1936.

Chas. E. Cook. (Seal.)

[fol. 34] In Supreme Court of New Jersey, May Term, 1937

No. 208

Newark Fire Insurance Company, Prosecutor,

vs.

State Board of Tax Appeals and City of Newark, a Municipal Corporation of the State of New Jersey, Respondents

Submitted May —, 1937. Decided August 31, 1937

On certiorari

Before Justices Bodine, Heher and Perskie.

For prosecutor, Arthur T. Vanderbilt.

For respondents, Frank A. Boettner, John A. Matthews.

Opinion of the Court—Filed September 1, 1937

The opinion of the court was delivered by

Perskie, J.:

The question before us concerns the validity of the personal property assessment made by the City of Newark on October 1, 1934, for the year 1935 against prosecutor. The assessment was made in accordance with our general tax act. P. L. 1918, chap. 307, p. 858, as amended.

[fol. 35] Prosecutor is a general fire insurance company organized under the laws of this state with its registered office at 31 Clinton Street, in the City of Newark. For six years prior to the assessment its main and executive offices have been and now are at 150 William Street, in the City

of New York. Prosecutor's general business is conducted in New York, and all the books of the company, except those required by law to be kept at its registered office in New Jersey, are located there. Although a small amount of cash and some few securities are kept in New Jersey so that business may be done here, the great majority of these items is either in the New York offices or in banks in that State. The business conducted at the Newark office is confined to local regional underwriting and the adjustment of claims arising therefrom. Reports on such business are sent to the main office in New York. The record also discloses that prosecutor pays no personal property tax in New York, and, for aught that appears, no such tax is exacted by that State.

The State Board of Tax Appeals affirmed the assessment as made by the taxing authorities of Newark thereby assessing the intangible property owned by prosecutor. This court granted certiorari and prosecutor argues that the assessment as made should be reduced because (1) New Jersey has no jurisdiction to tax the intangibles; and (2) because it was error to include the item of unearned premium reserve as a taxable asset.

First. As to jurisdiction to tax prosecutor in this State. This question must, in light of the proofs, be considered upon the inescapable premise that prosecutor had its business situs as of October 1, 1934, and still has it, in New [fol. 36] York; that the securities, the personalty involved, have become an integral part of its business situs in New York; but that prosecutor pays no personal property tax to the State of New York.

It is fundamental that jurisdiction to tax depends primarily on the type of tax sought to be exacted and the property that is subject to the tax. Here the tax, under the act, is a personal property tax. The property subject to the tax constitutes securities which represent paid in capital stock and accumulated surplus of the company. Such securities are clearly intangibles. It is well settled that intangible personalty is taxable at the domicil of the owner. Kirtland v. Hotchkiss, 100 U. S. 491; Blodgett v. Silberman, 277 U. S. 1; Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204. That principle finds its support in the legal maxim mobilia sequuntur personam. The use of this maxim like the use of most other maxims in juris-

prudence, is not the solution of the problem; it is merely a formal and unexplanatory statement of a legal conclusion. Cf. 9 Harvard Law Review 13; 8 Am. L. Rev. 519. Thus frequently its use is not very helpful. But since contrary to the case of tangibles, intangibles have no actual situs, are not physically under the definite control of any one jurisdiction, the rule, as embraced in the maxim developed and is justified even to this day as a rule of convenience. Convenience, however, brings hardship. So it was not long before exceptions to the general rule as stated gradually found and worked themselves into the law. Thus it has been held that where intangible personal property became an integral part of a business carried on in a state other than that of the domicil of the owner of the intangibles, then that other state, the state wherein the intangibles [fol. 37] acquired a "business situs" had jurisdiction to levy a personal property tax upon these intangibles. New Orleans v. Stempil, 175 U. S. 309; Metropolitan Life Ins. Co. of N. Y. v. New Orleans, 205 U. S. 395; Wheeling Steel Corp. v. Fox, 298 U. S. 193; Safe Deposit & Trust Co. v. Virginia, 280 U. S. 583; Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204; First National Bank of Boston v. Maine, 284 U. S. 312; see, 76 A. L. R. 806. Conceding the application of this exception to the general rule, the problem soon arose as to whether, when the "business situs" theory did apply, the state of the domicil could still tax. The answer to that question is not free from serious doubt, a doubt which the Supreme Court of the United States has sounded notwithstanding its holding that the state of the domicil might tax even though the "business situs" theory applied. Cream of Wheat Co. v. County of Grand Forks, 253 U. S. 325. It is interesting to observe the growing tendency of this doubt. It manifests itself both prior to and subsequent to the holding in the Cream of Wheat case. For example, in the case of Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194, decided prior to the Cream of Wheat case, and in the case of Frick v. Pennsylvania, 268 U. S. 473 (overruled on other grounds) it was held that tangible property may be taxed only by one state; and again the court has held, since the Cream of Wheat case, that in the absence of the applicability of the "business situs" exception, only the state of the domicil might tax intangibles. Farmers Loan & Trust Co. v. Minnesota,

supra; Baldwin v. Missouri, 281 U. S. 586; Beidler v. South Carolina Tax Commission, 282 U. S. 1; First National Bank of Boston v. Maine, supra. In so holding the court was [fol. 38] very careful to point out, notwithstanding its holding in the Cream of Wheat case, that the question involving the right of the domiciliary state to tax when the "business situs" exception applied is an open one. Decision thereof has been expressly reserved. Cf. Farmers Loan & Trust Co. v. Minnesota, supra, at p. 213, and First National Bank of Boston v. Maine, supra, at p. 331. While this doubt has been cast by the highest court of our land, that body has never expressly overruled its decision in the Cream of Wheat case. Until such time as that case is reconsidered, we are bound by its holding that there is a sufficient interrelation between the state of the domicil and the intangibles which have acquired a business situs elsewhere to justify the imposition of a personal property tax by the former upon the latter.

Nor do we, by so deciding run afoul of the strong modern sentiment against multiple taxation as manifested by the United States Supreme Court. See Farmers Loan & Trust Co. v. Minnesota, supra, at p. 212; First National Bank of Boston v. Maine, supra, at pp. 326, 334. For, as has been pointed out, prosecutor pays no personal property tax in New York. Thus under the circumstances here exhibited multiple taxation is impossible. Prosecutor may not invoke the dictum that "the rule of immunity from taxation by more than one state * * * is broader than the application thus far made of it." First National Bank of Boston v. Maine, supra, at p. 326.

Second. As to the item of unearned premium reserve. We are aware of the fact that sound accounting practice may require this item to be booked as a liability. Nor are we unmindful of the many things that may be said in favor [fol. 39] of such a requirement. Modern statistical analyses available to companies in the position of prosecutor may and do compute to a very accurate degree just what part of such reserve will be expended each year. But companies control the fund so set up. They invest them and earn a return upon them. Because of these factors our sister states have divided upon the answer to this problem. See 13 A. L. R. 189, et seq. Our Court of Errors

and Appeals has taken the position that this item, at least for the purpose of taxation, should be considered an asset. City of Trenton v. Standard Fire Ins. Co., 77 N. J. L. 575, 73 At. 606. Whether the reserve set up consists of exempt securities, and the exemption of the reserve fund as claimed would thus result in a double deduction is not made clear. But be that as it may, this court is bound by the decision in the case of City of Trenton v. Standard Fire Ins. Co., supra.

Third. The parties stipulated before the Board that prosecutor had cash on hand or on deposit as of October 1, 1934 of $532,784.54 of which amount the sum of $6,425.32 was deposited in banks in New Jersey and the balance of $526,359.22 represents cash on hand in either the New York office or on deposit in New York banks. The State Board determined that this item was exempt under P. L. 1933, chap. 165, p. 346. Respondent's argument that this determination is incorrect, if properly before us, is sound. Prosecutors cash on hand or on deposit as of October 1, 1934 was not exempt; it was taxable. Newark v. State Board of Tax Appeals, 118 N. J. L. 131, 191 At. 843. We are, of course, under section 11 of our Certiorari act (1 C. S. (1709-1910) pp. 402-406), obliged to "determine disputed ques-[fol. 40] tions of fact as well as of law—" But that, under the circumstances exhibited and generally stated, means disputes, as to facts or law or both, properly raised. Is the point properly before us? We think not. True, it was raised and disputed before the State Board of Tax Appeals; the latter passed judgment upon it. But it is also true that, save as to the argument made here upon the point, respondents permitted the judgment of the Board to stand unchallenged. It cannot now properly be heard to complain. The fact of the matter is that, notwithstanding its argument to the contrary, respondents conclude their brief with the submission "that the judgment of the State Board of Tax Appeals should be affirmed and the writ of certiorari dismissed."

The judgment of the State Board of Tax Appeals is, therefore, affirmed with costs.

(Reported in 118 N. J. L. 525, 193 Atl. 912.)

fol. 41] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

NOTICE OF APPEAL AND GROUNDS OF APPEAL—Filed November 18, 1937

To James F. X. O'Brien, Esq., Attorney of Defendant City of Newark and Defendant State Board of Tax Appeals:

Take notice that the prosecutor appeals to the Court of Errors and Appeals in the last resort in all causes from the whole of the judgment of the Supreme Court entered in this cause on the following ground:

1. The Supreme Court erred in affirming the judgment of the State Board of Tax Appeals and in dismissing the writ of certiorari herein.

Arthur T. Vanderbilt, Attorney for and of Counsel with Prosecutor.

Dated October 28, 1937.
Sat below: Perskie, J., Heher, J., Bodine, J.

fol. 42] Service of a copy of the within notice and grounds of appeal is hereby acknowledged this 15th day of November, 1937.

James F. X. O'Brien, Attorney for Defendant, City of Newark. Chas. E. Cook, Secretary of Defendant, State Board of Tax Appeals.

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fol. 43] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

NEWARK FIRE INSURANCE COMPANY, Appellant,

v.

STATE BOARD OF TAX APPEALS et al., Respondents

Submitted February 11, 1938. Decided April 29, 1938

On Appeal from the Supreme Court, Whose Opinion is Reported in 118 N. J. L. 525

For the appellant, Arthur T. Vanderbilt.
For the respondents, James F X. O'Brien.

OPINION—Filed April 29, 1938

Per CURIAM:

The judgment under review herein should be affirmed, for the reasons expressed in the opinion delivered by Mr. Justice Perskie in the Supreme Court.

For affirmance as to first and third parts—The Chancellor, Chief Justice, Trenchard, Parker, Donges, Porter, Hetfield, Dear, Wells, Wolfskeil, Rafferty, Walker, JJ. 12.

For reversal as to second part—Walker, J., 1.

A true copy. Thomas A. Mathis, Clerk.

[File endorsement omitted.]

[fol. 44] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

NEWARK FIRE INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS and THE CITY OF NEWARK, a Municipal Corporation of the State of New Jersey, Respondents

On Appeal

ORDER OF AFFIRMANCE AND REMITTITUR TO SUPREME COURT —Filed May 31, 1938

This cause having been duly submitted on briefs at the February term, 1938, of this court by Arthur T. Vanderbilt, of counsel for the prosecutor, and Andrew B. Crummy, of counsel for the respondent, City of Newark, and the court having considered the same, and finding no error in the record of proceedings in the Supreme Court,

It is, thereupon, on this 29th day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight, Ordered and Adjudged that the judgment of the Supreme Court reviewed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of Jno. A. Matthews, Special Counsel to City of Newark.

A True Copy. Thomas A. Mathis, Clerk.

[fols. 45-60] [File endorsement omitted.]

[fol. 61] In Supreme Court of the United States

[Title omitted]

Petition for Appeal From the Court of Errors and Appeals of the State of New Jersey to the Supreme Court of the United States—Filed October 8, 1938

Considering itself aggrieved by the final decision of the Court of Errors and Appeals of the State of New Jersey in the above entitled cause, petitioner, the Newark Fire Insurance Company, a corporation of the State of New Jersey, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon, and to that end respectfully shows:

1. Your petitioner is the prosecutor-appellant in the above entitled cause.

2. Petitioner states that it was on October 1, 1934 and now is a corporation organized under the laws of the State of New Jersey having its statutory registered office at 31 Clinton Street, in the City of Newark, where it maintains, however, only a local or regional claim underwriting department. Its main and executive offices are located at 150 William Street, in the City of New York, State of New York, the place of its business situs and commercial domicile, where all of the general business incident and necessary to the conduct of an insurance company is conducted, where all of its books are kept with the exception of those required by law to be kept within the State of New Jersey, and where its executive officers are located. All of its securities, cash and accounts receivable are located in New York or in banks outside of the State of New Jersey, with minor exceptions.

[fol. 62] 3. On October 1, 1934 the City of Newark assessed a personal property tax against the capital stock and accu-

mulated surplus of the petitioner as of October 1, 1934, pursuant to Chapter 236 of the Laws of New Jersey of 1918, Sections 202, 301 and 307, now changed to Revised Statutes of New Jersey, Sections 54:4-1, 54:4-9 and 54:44-22. Petitioner appealed from these assessments to the Essex County Board of Taxation which rendered a judgment affirming the assessment. Petitioner thereupon appealed to the State Board of Tax Appeals of the State of New Jersey, which affirmed the decision of the County Board. The Supreme Court of New Jersey reviewed this decision by certiorari and affirmed it. Upon appeal to the Court of Errors and Appeals, the court of last resort in all causes in the State of New Jersey, this judgment of the Supreme Court was affirmed.

4. There is error in the final judgment and the record of the proceedings in this cause in the said Court of Errors and Appeals of the State of New Jersey whereby petitioner is aggrieved in that in the decision and judgment of the said Court there was drawn in question the validity of a statute of the State of New Jersey, namely, Chapter 236 of the Laws of New Jersey of 1918, Sections 202, 301 and 307, now changed Revised Statutes of New Jersey, Sections 54:4-1, 54:4-9 and 54:4-22, which as construed and applied by that Court constituted a personal property tax by the State of New Jersey through the City of Newark upon the intangible personal property of a domestic corporation having a statutory registered office within the state but having its business situs or commercial domicile in the State of New York, on the ground of its being repugnant to and in contravention of the 14th Amendment of the Constitution of the [fol. 63] United States, and that the decision and judgment of the said Court was in favor of the validity of such statute.

5. Therefore, in accordance with Sec. 237(a) of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows this court that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, to wit, under Sec. 237(a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

Wherefore petitioner prays for the allowance of an appeal from the aforesaid final judgment of the Court of Errors

and Appeals of the State of New Jersey to the Supreme Court of the United States in order that the decision and judgment of the Court of Errors and Appeals of the State of New Jersey may be examined and reversed, and further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Court of Errors and Appeals of the State of New Jersey, may be sent to the Supreme Court of the United States, as provided by law. The errors upon which petitioner claims to be entitled to an appeal are those hereinabove indicated and which are more fully set out in the Assignment of Errors filed herewith.

Dated August 19, 1938.

Arthur T. Vanderbilt, Attorney for Petitioner.

Application for allowance of the Appeal read to me this 22d day of August, 1938.

Louis D. Brandeis, Associate Justice.

A True Copy. Thomas A. Mathis, Clerk.

[fol. 64] The within petition is denied, solely for lack of jurisdiction.

Luther A. Campbell, C. & D. J. Ct. Errors and Appeals of N. J.

[File endorsement omitted.]

[fol. 65] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—Filed October 8, 1938

The prosecutor-appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Errors and Appeals of the State of New Jersey on the 31st day of May, 1938, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the

Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Court of Errors and Appeals of the State of New Jersey in the above entitled cause as provided by law, and it is further ordered that the clerk of the Court of Errors and Appeals of the State of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in [fol. 66] said Court within forty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $500.

Dated October 3, 1938.

Louis D. Brandeis, Associate Justice.

A True Copy. Thomas A. Mathis, Clerk.

[fol. 67] [File endorsement omitted.]

[fol. 68] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 8, 1938

The said Newark Fire Insurance Company assigns the following errors of record and proceedings in this cause:

1. The judgment of the Court of Errors and Appeals of the State of New Jersey in affirming the judgment of the New Jersey Supreme Court and in holding that the assessment levied by the City of Newark under Chapter 236 of the Laws of 1918, sections 202, 301 and 307 (now Revised Statutes of New Jersey, sections 54:4-1, 54:4-9 and 54:4-22) against the intangible personal property of petitioner for taxes for the year 1935 is a valid assessment was erroneous and illegal because the commercial domicile and business situs of the petitioner and of the property taxed on October 1, 1934 was located in the City of New York, beyond the jurisdiction of the taxing district. The construction and application of said sections of the statute by the Court of Errors and Appeals of the State of New Jersey subjecting

the intangible personal property of appellant to taxation by the City of Newark is repugnant to the 14th Amendment of the Constitution of the United States and deprives petitioner of its property without due process of law.

Wherefore, on account of the errors hereinbefore assigned, petitioner prays that the said judgment of the [fol. 69] Court of Errors and Appeals of the State of New Jersey dated the 31st day of May, 1938 in the above entitled cause affirming the judgment of the New Jersey Supreme Court may be reversed, set aside and for nothing holden.

Dated August 19, 1938.

Arthur T. Vanderbilt, Attorney for Appellant.

A True Copy. Thomas A. Mathis, Clerk.

[fol. 70] [File endorsement omitted.]

[fols. 71-76] Bond on appeal for $500.00, approved and filed October 13, 1938, omitted in printing.

[fols. 77-78] Citation, in usual form, filed October 8, 1938, omitted in printing.

[fol. 79] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 80] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed October 31, 1938

Comes now the appellant and adopts its assignments of error as its statements of points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

Dated October 28, 1938.

Arthur T. Vanderbilt, Counsel for Appellant.

[fol. 81] Service of the within Statement of Points and Designation of Record is hereby acknowledged upon this 28th day of October, 1938.

Special Counsel for Appellee, City of Newark. James F. X. O'Brien, Counsel for Appellee, City of Newark. Chas. E. Cook, Sec. State Board of Tax Appeals.

[fol. 82] AFFIDAVIT

John Lee of full age, being duly sworn according to law upon his oath deposes and says:

I am a clerk in the law office of Arthur T. Vanderbilt, counsel for appellant in this case. On October 29, 1938, between the hours of ten and eleven A. M. I served a copy of the Statement of Points and Designation of Record upon John A. Matthews, Special Counsel of Record for Appellee City of Newark, by handing a copy of same to Gertrude Kane, secretary, who was in charge of his office at 744 Broad Street, Newark, N. J.

John Lee.

Subscribed and sworn to before me this 29th day of October, 1938. Evelyn T. Adam, a Notary Public of New Jersey. (Seal.)

[fol. 83] [File endorsement omitted.]

Endorsed on cover: File No. 42,934. New Jersey Court of Errors and Appeals. Term No. 449. Newark Fire Insurance Company, appellant, vs. State Board of Tax Appeals and The City of Newark. Filed October 31, 1938. Term No. 449, O. T., 1938.